(2)

No. 83-2065

IN THE

SUPREME COURT OF THE UNITED STATES

TERM: OCTOBER 1983

ROLAND A. JONES,

PETITIONER,

v.

DEPARTMENT OF HUMAN RESOURCES (DHR), STATE OF GEORGIA, et al.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RECORD OF APPENDICES

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APPENDIX A

JONES V. STATE OF GA.

GODBOLD, Chief Judge:

Jones, a state employee, brought this action against the Department of Human Resources (DHR) and his supervisors at the department, claiming that his termination violated the First, Fifth, Fourteenth Amendments and 42 U.S.C. Sec. 1983 (1976 & Supp. V 1981). The district court concluded that Jones had no property or liberty interest infringed by his termination and dismissed for lack of jurisdiction. We affirm.

DHR hired Jones as a "working test" employee, meaning that he was a probationary employee for his first six months. State Personnel Board Rules and Regulations 12.301.1 provided that

> [a]n employee serving a working test period ... may be separated from his position by the appointing authority or his designee at

1 record at 132

any time during the working test period. The employee shall be notified in writing in advance of the separation but the separation cannot be appealed except as otherwise provided in these rules. [1] [Points underlined supplied by Petitioner Jones]

Jones reported for work May 18, 1981, but was not credited with starting until June 1, 1981. When he informed his supervisors that this treatment violated the department's regulations, he received no relief. He continued to press this claim as well as other objections to his working conditions, and was fired in October 1981. His supervisors, rather than citing to 12.301.1, cited to another regulation, 11.202A, which arguably only applied to employees who have completed thier working test period.

Jones sued the department and his supervisors. The defendants moved to dismiss under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction and under Fed.R. Civ.P.

12(b)(6) for failure to state a claim upon which relief can be granted. The district court viewed the complaint as raising only due process and Sec. 1983 claims. The court found the department's action infringed no liberty or property interest and dismissed for lack of jurisdiction.

[1] When a district court has pending before it both a 12(b)(1) motion and a 12(b)(6) motion essentially challenges the existence of a federal cause of action, is for the court to find jurisdiction and then decide the 12(b)(6) motion. Williamson v. Tucker, 645 F.2d 404, 415 (5th Cir.) cert, denied, 454 U.S. 897, 102 S.Ct. 396, 70 L.Ed.2d 212 (1981). Exceptions to this rule exist, however, when "the plaintiff's claim `has no plausible foundation' or `is clearly foreclosed by a prior Supreme Court decision.'" Id. at 416.

[2] Jones had no property interest in continued employment under Reg. 12.301.1. Board of Regents v. Roth, 408 U.S. 564, 92

S.Ct. 2701, 33 L.Ed.2d 548 (1972). While Jone's supervisors apparently referred to the wrong regulation, such a mistake does not create a federal interest where none existed before. Cf. Bishop v. Wood, 426 U.S. 341, 349-50, 96 S.Ct. 2074, 2079-80, 48 L.Ed.2d 684 (1976) (mistakes on personnel decisions not implicating federal constitutional rights do not in and of themselves raise a federal claim). Roth clearly precluded Jone's claim of deprivation of a property interest.

[3] Jones also was deprived of no liberty interest. No impairment of a liberty interest occurs "when there is no public disclosure of the reasons for the discharge." Bishop, 426 U.S. at 348, 96 S.Ct. at 2079. Supreme Court precedent foreclosed this claim of Jones.

[4] Jones stated in his complaint that the dismissal violated his First Amendment rights. However, in his prayer for relief, he refers to the "substantive and procedural `fair play' and due process ... assured by the First, Fifth, and Fourteenth Amendments." [Footnote

2] The district court did not consider Jone's First Amendment claim when it dismissed for lack of jurisdiction. However, prior Supreme Court cases effectively dispose of this argument. Pickering v. Board of Education, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968) established that the First Amendment protects a public employee's statements on issues of "legitimate public concern." Whatever the scope of "legitimate public concern," see Connick v. Myers, --- U.S. --103 S.Ct. 1684, 75 L.Ed.2d 708 (1983), the phrase does not encompass Jone's complaints about his own situation.

Because Jones suffered no impairment of his First Amendment rights or of a property or liberty interest, he has stated no claim under Sec. 1983, which requires deprivation of a "right ... secured by the Constitution and laws."

AFFIRMED.

2. Id. at 57

APPENDIX B

FILED IN CLERK'S OFFICE
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MARCH 11 1983
BEN H. CARTER, CLERK

DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROLAND A. JONES,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	C82-2554A
THE STATE OF GEORGIA, et al.,	:	
Defendants	:	

ORDER

Plaintiff filed this civil rights action, pursuant to 42 U.S.C. 1983, challenging his dismissal as a "working test employee" [1] of

---

1 Section 45-20-2(16) and (17) of the Official Code of Georgia provides as follows:

(16) "Working test" pr "working test period" means the initial period of employment in a class of covered positions following appointment, reappointment, or promotion. During this period, the employee is expected to demonstrate to the satisfaction of the

defendant Georgia Department of Human Resources.

The case is presently before the Court on defendants' motion to dismiss, pursuant to Rule 12(b)(1) and (b)(6), Fed.R.Civ.P., on the grounds that (1) this Court lacks subject matter jurisdiction and (2) that the complaint fails to state a claim upon which relief can be granted. Alternatively, defendants move for a more definite statement of plaintiff's claims, pursuant to Rule 12(e), Fed.R.Civ.P.

This Court would have jurisdiction over plaintiff's claim, that defendants violated the rules and regulations of the State Personnel Board in dismissing him, only if he had a

---

appointing authority that he has the knowledge, ability, apititude, and other necessary qualities to perform satisfactorily the duties of the position in which he has been employed. The working test period will normally be the first six months in the class of positions; provided, however, that the commissioner may fix the length of the working test period for any class at not less than three months nor more than 12 months exclusive of time spent in nonpay status or in an uncovered position.
(17) "Working employee" or "employee on working test" means a covered employee serving a working test period in the class of

"liberty" or "property" interest in his continued public employment to warrant constitutional protection. Board of Regents of State Colleges v. Roth, 408 U.S. 571, 569 (1972). To determine whether plaintiff had a property interest in his employment with defendant Department of Human Resources the Court must look at state law. Bishop v. Wood, 345, 344 (1976).

Personnel Board Rule 12.301.1 of the State of Georgia provides in part that "[a]n employee serving a working test period following appointment or reappointment may be separated from his position by the appointing authority or his designee at any time during the working test period." (Emphasis continued employment. added.) This rule makes clear that a state employer, such as defendant Department of Human Resources, may terminate

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covered positions in which he has been employed; provided, however, that an employee serving a working test period following a promotion from a lower class in which he held permanent status shall retain permanent status rights in the lower class until he attains permanent status in the class to which he has been promoted.

an employee such as plaintiff "at any time during the working test period". Id. The said rules does not restrict the employer's prerogative to discharge a "working test employee" by any language such as "for cause", which might imply a right to continued employment absent a finding of cause for the discharge in question. Accordingly, the aforementioned state rule does not confer on a "working test employee" a property right to

Furthermore, the fact that the rules and regulations of the State Personnel Board (Board) might provide for certain procedures for terminating a "working test employee" does not mean that plaintiff has a federally-protected interest in assuring that state officials comply with the Board's guidelines. As noted by the Supreme Court in Bishop, supra, at 349-50

> The federal court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies. We must accept the harsh fact that numerous individual mistakes are inevitable in the day-to-day administration of our affairs. The United States Constitu-

> tion cannot feasibly be construed to require federal judicial review of every such error .... the Due Process Clause of the Fourteenth Amendment is not a guarantee against incorrect or ill-advised personnel decisions.

Therefore, in view of this Court's finding that plaintiff has no "property" interest in his continued employment with defendant Department of Human Resources, plaintiff's claim is beyond the limited jurisdiction of this Court. Accordingly, defendants' motion to dismiss is hereby GRANTED.

IT IS SO ORDERED, THIS 11th day of March, 1983.

Marvin H. Shoob, Judge
United States District Court
Northern District of Georgia

APPENDIX B1

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

ROLAND A. JONES

vs.

STATE OF GEORGIA, DEPARTMENT OF HUMAN RESOURCES, RESOURCES, et.,al

CIVIL ACTION DOCKET NO. C82-2554A

JUDGEMENT

This action came on for consideration before the court, United States District Judge MARVIN H. SHOOB presiding. The issues having been duly considered and a decision having been duly rendered, it is ordered and adjudged.....That Judgement is Entered for the Defendants' THE STATE OF GEORGIA, THE DEPARTMENT OF HUMAN RESOURCES, THE DIVISION OF FAMILY AND CHILDREN SERVICES, DR. L. PATRICIA JOHNSON, individually and in her capacity as the Director of the Division of Family and Children Services, MR. DOUGLAS G. GREENWELL, individually and in his capacity as the Deputy Director of the Division of Family and Children Services, MR. TRUMAN A. MOORE, individual-

ly and in his capacity as the Director of the Administration and Management, MRS. BARBARA G. DEEDY, individually and in her capacity as the Chief of the General Administration Support Unit, MS. DIANA K. FOX, individually and in her capacity as the Chief of the Planning and Evaluation Unit, and against the Plaintiff ROLAND A. JONES for costs of action.

Dated at: Atlanta, GA

Date: March 11, 1983

FILED AND ENTERED IN CLERK'S OFFICE
March 11, 1983
BEN H. CARTER, CLERK

BY: _____
DEPUTY CLERK

CLERK OF THE COURT

_____
DEPUTY CLERK

APPENDIX B2

FILED IN CLERK'S OFFICE
U.S.D.C. - ATLANTA

APR 22 1983
BEN H. CARTER, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROLAND A. JONES :

Plaintiff, : CIVIL ACTION

v. : C82-2554A

THE STATE OF GEORGIA, et al., :

Defendants :

ORDER

(NOTE: Underlined remark supplied by Petitioner Jones).

Plaintiff's motion for reconsideration of this Court's order of March 11, 1983, granting defendants' motion to dismiss, and to vacate the judgment, entered on March 11, 1983, is hereby DENIED. Plaintiff's lengthy brief fails to provide any new grounds to disturb this Court's finding that he has no "property" interest in his continued employment with

defendant Georgia Department of HUman Resources.

IT IS SO ORDERED, this 21st day of April, 1983.

Marvin H. Shoob, Judge
United States District Court
Northern District of Georgia

APPENDIX B3

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MAY 24, 1984

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MAY 24 1984

BEN H. CARTER, CLERK
BY:
DEPUTY CLERK

IN THE UNITED STSTES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 83-8370

ROLAND A. JONES,

Plaintiff-Appellant

versus

THE STATE OF GEORGIA,
et al.,

Defendants-Appellees.

Appeale from the United States District Court
for the Northern District of Georgia

Before GODBOLD, RONEY, and TJOFLAT, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the Motiom of Appellant for Relief of Judgment is DENIED.

APPENDIX C

COURT OF APPEALS
SEVENTH CIRCUIT

MAR 23 1984

SPENCER D. MERCER
CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 83-8370

ROLAND A. JONES,

Plaintiff-Appellant,

versus

THE STATE OF GEORGIA, et al.,

Defendants-Appellees.

- - - - - - - - - - - - - - - -

Appeal from the United States District Court for the Northern District of Georgia

- - - - - - - - - - - - - - - -

ON PEETITION FOR REHARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion February 24, 1984 , 11 Cir., 198__, _____F.2d_____).

Before GODBOLD, Chief Judge, RONEY AND TJOFLAT, Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on reharing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Reharing En Banc is DENIED.

( ) The Petition for Reharing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in facor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a pool on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, reharing en banc is DENIED.

ENTERED FOR THE COURT:

_____

United States Circuit Judge

APPENDIX C1

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 83-8370

Non-Argument Calendar

D.C. Docket No. C82-2554A

ROLAND A. JONES,

Plaintiff-Appellant,

versus

THE STATE OF GEORGIA, et al.,

Defendants-Appelees.

- - - - - - - - - - - - - - - - - -

Appeal from the United States District Court for the Northern District of Georgia

- - - - - - - - - - - - - - - - - -

Before GODBOLD, Chief Judge, RONEY AND TJOFLAT, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of

Georgia, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 23;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be, and the same is hereby, AFFIRMED;

It is further ordered that plaintiff-appellant pay to defendants-appelles, the costs on appeal to be taxed by the Clerk of this Court.

Entered: February 21, 1984

For the Court: Spencer D. Mercer, Clerk

By: _____
Deputy Clerk

ISSUED AS MANDATE: APR 2 1984

APPENDIX D

(ATTACHMENT FROM COMPLAINT FILED IN DISTRICT COURT).

C. SUBSTANTIVE STATEMENTS OF FACTS,CIRCUMSTANCES,AND ALLEGATIONS:

1. In January 1981, complainant was invited by respondent FOX for an interview for a position of Planner II. During the interview complainant was told of the many problems that DFACS was having with its planning and how much the Respondent Commissioner was displeased with the DFACS planning effort. Complainant was told that his background and experiences could "really" help the DFACS overcome its problems with DHR, among other things. Complainant was also told that if hired he could help to improve the DFACS planning system. Complainant was also told that the position for which he had applied for was also to be "upgraded" to a Planner III rating. Complainant provided his resume containing the details pertaining to his knowledge, skills, and abilities. Complainant's background is ground in systems

approach and doing it "right" the first time methods.

2. Later, Complainant was called for an interview with Respondent MOORE. Respondent MOORE was very uncomfortable during the interview. MOORE "squirmed" in his seat and he never looked the Complainant in the eye during the interview. Complainant believes that MOORE did not want to hire him in the first place; However, because the Deputy Director (his boss) at that time was "black" and also retired Army Lt. Col., Complainant believes that MOORE went along with the hiring only because he felt that he had no choice. IT IS STRANGELY COINCIDENTAL THAT THE COMPLAINANT WAS .PN 18 SUDDENLY DISCHARGED SHORTLY AFTER THE "BLACK" DEPUTY DIRECTOR RESIGNED. The word also had it that JOHNSON, the Director of DFACS, was extremely angered because he had resigned.

3. During the interview MOORE also confirmed FOX's perceptions pertaining to the DFACS planning problems and added that the

Commissioner did not like PAT (the Director of DFACS, Respondent JOHNSON) and that the DHR staff, including the Commissioner (Respondent EDWARDS), thought of all DFACS personnel as "just social workers" who did not know what they were doing. Compainant listened and presented his systems approach resume containing his knowledge, skills and abilities and informed Respondents MOORE and FOX that he thought that could improve the unfavorable image that DFACS had with the Department DHR by orchestrating a comprehensive planning system, using sound management practices and principles, and demonstrating, by example, to the Commissioner that DFACS, in fact, did have a "competent" management team.

4. On March 31, 1981, Complainant received a letter from Respondent FOX apologizing for "the continued delay" in filling the position and that a decision was expected by or before April 15, 1981 (EXHIBIT C).

5. Complainant was later called by Res-

pondent FOX and informed that he would be acceptable for the position; however, later Complainant received another call from Respondent FOX and she informed him that there had been a mess up and that Complainant would have to submit another application because they (FOX,MOORE, and DEEDY) had taken too much "interview" time and the register that he was on had expired. Complainant did nothing to cause the delay (January to May).

6. Complainant responded and hand-delivered another hastily prepared application to Respondent FOX. While at the copy machine, making a copy of the application for himself, Complainant told Respondent FOX that he did not understand why he had to go through all of this again since it was not his fault that they had protracted the interview process and allowed the register that he was on to expire. Complainant told Respondent FOX that it was odd that the personnel office should require all of this to be done, again. Respondent FOX stated that they ("they" unknown) are doing"

you" a favor. Complainant responded that he did not feel that he needed a favor since he was on a valid register at the start of the administrative process, and he had done nothing to prolong the interview process beyond the expiration date of the register. This did not seem fair to complainant since the effective date that he entered the systems process was at the time for the first interview, in January, and the chain of the process had continued unbroken; therefore, nothing should change his status because he was already in the system's processes. This was later learned to be a true observation. It did have a "negative" affect on the Complainant in the future. Complainant was later appointed as an "emergency" when, in fact, no emergency existed.

7. Complainant was "again" called by FOX, during mid April,and was told that his time for reporting to work would have to be delayed because DFACS was so far behind in getting the plan finished and submitted to the

Commissioner and that she (FOX) would be away. Respondent FOX stated that the start date of employment would be May 18, 1981, and Complainant agreed.

8. Complainant really believes that since Respondent MOORE did not want him in the division in the first place. Respondent MOORE had just recently reorganized the division and , thereby, reorganized himself and others into high level positions. Respondent MOORE perceived the Complainant as a "possible" threat to his recently acquired status/position, or he perceived the complainant as a "possible" threat to others he had put into positions because the Complainant was "black", a "male", and qualified. Complainant also later observed that Respondent MOORE had alienated many ranking officials in the department of DHR because of his reorganization, among the other things.

9. Complainant "actually" reported to work on May 18, 1981. But Complainant was not given credit for his length of service until

June 1, 1981. This action on the part of MOORE,DEEDY,and FOX was contrary to regulations and Complainant's request.

10. Instead of being placed in the position for which hired (Planner II), upon reporting to work Complainant was immediately thrust into services as a "copy boy" operating the copy machine and as a "messenger boy" delivering parcels to and from the downtown office. Complainant was then, and was never provided an entrance orientation other than introductions to other DFACS personnel.

11. Complainant was "also" taken advantage of and directed to relocate office furniture from the office of another female employee to another office. Complainant was also instructed that he would have to go to the Murphy Avenue Salvage Yard to get his "own" furniture for "his" office. Complainant felt that someone was trying to discourage him into resigning by seeing that he was assigned as many dirty tasks as possible. Complainant, instead of refusing to do the jobs assigned

him, did the first furniture moving job with the help of two other males and he did the second furniture moving job by himself. It should be noted that during the course of these events, Complainant was injured.

12. On June 3, 1981, Complainant's doctor confirmed the injury as a hernia requiring, in his opinion, (radical) surgery. Respondent FOX was advised of the injury on the same day (June 3, 1981) and Complainant requested information concerning time off to get the injury repaired.

13. There was no filing system in the Planning and Evaluation Unit (papers were strewn all around ,stacked in boxes, and in piles). Complainant was given boxes and piles of documents by his supervisor (FOX) for him to review and "discover" what his job task were to be.

14. On June 10, and because of Complainant's background in computers (five and one-half years - See EXHIBIT A), Mr. Jim Phillips (Director of DFACS Management Infor-

mation Systems Office) requested Complainant's thoughts concerning new systems operations for DFACS. Complainant provided some thoughts EXHIBIT D).

15. On July 1, 1981, a new Director, (White/Male) was hired to be the Director of the DFACS Management Information Systems Office. Complainant wondered why he was not considered concerning his qualifications for that position since his qualifications were known by Respondent MOORE who had input into the hiring of the new White/Male Director. Complainant believes that he was better qualified for the position of DIRECTOR than the white/male who was hired.

16. Throughout Complainant's short lived tenure, Complainant submitted a number of comprehensive proposals to improve the management planning system of the DFACS Welfare operations. Respondent FOX admitted that she did not understand the concepts and techniques contained in the proposals. Respondent MOORE ignored the proposal and didn't bother to

respond to them. Respondent MOORE rebuffed all other improvement proposals made by Complainant.

17. Complainant was also assigned the responsibilities of another female whose job was supposed to be that of organizing and maintaining a project called Resources Management.

18. On August 10, 1981, Respondent FOX also assigned to Complainant an evaluation project that was the work of other unit members (White/females) responsible for administering the program data contained in the project. This project had not been completed by unit staff personnel for over a year prior to the hiring of the Complainant. Even though Complainant did not feel it was rightfully his project, Complainant developed a simplified system to complete the project. Respondent MOORE disapproved of the cost-effective "simplified" method. Respondent MOORE insisted on using the "old" methods of committees, meetings, etc. Complainant ad-

vised Respondents that this would again add to the already delayed project. Respondent MOORE prevailed and the old way was used; however, the planning document that Complainant had initially developed to collect the data was only word smithed by the committee (in a few places) and survived in its original form. Complainant went on to complete this DFACS long overdue and neglected project within a very short period of four weeks. Ironically, his last action concerning this project (a thank you letter to all District Directors) was completed on the same day that he was terminated.

19. During the course of these events, Complainant was again informed that his position of Planner II would be upgraded to Planner III. FOX later informed Complainant that MOORE had changed his mind and it would remain unchanged (not upgraded to Planner III). Why did MOORE go along with Complainants position not being upgraded? Complainant feels that this was another effort engineered to get

him to resign. It followed almost the same pattern that was used to discourage the "black" male, who was in the unit doing the job before the Complainant was hired, into resigning.

20. On August 13, 1981, Complainant's inquiries concerning recruitment for a DFACS position for a Training Program Coordinator were also rebuffed. A Training Program Coordinator is subordinate in position rank to a Training Program Administrator. Complainant was qualified by the State Merit System at a level superior to that of a coordinator (he was qualified as a Training Program Administrator) and was on the System register with a score of 94 out of 100. Yet, he was considered unqualified for the internal DFACS position in favor of a white/female who was hired.

21. As Complainant's discomfort from the on-the-job injury increased, the administrative stumbling blocks were also increased and placed in the path of his securing medical care for the injury. Respondent superiors

would not cooperate and correct, as authorized by the regulations, his "actually" reported for work date which would have provided a few more days of sick and annual leave, but instead insisted that he would be penalized an extra two months (added to his work test period) if he entered the hospital before completing his work test. Complainant still wanted his "true" work test ending date corrected, recorded and counted from the first day that he "actually" reported to work (May 18, 1981), instead of the recorded June 1, 1981 date.

22. Since the "black" Deputy Director had resigned, Respondents DEEDY, FOX and MOORE, rather than make the corrections conspired to terminate the Complainant under the work test rule to conceal their administrative errors against the Complainant pertaining to his initial appointment; to conceal the incorrectness of the so-called "emergency" appointment and to deny Complainant's test period which was to have begun on May 18, 1981 (the day he

actually reported for work) instead of the June 1, 1981 date forced upon him by Respondents; and to conceal the efforts of their other misguided deeds.

23. On October 5, 1981 the content of the "THREE" regulations that stated that the term of employment was to start on the first day that the employee "actually" reported to work was discussed with Respondent MOORE. Respondent MOORE agreed and informed Complainant to advise Respondent DEEDY.

24. On October 5, 1981 during a telephone conversation with Respondent DEEDY, the Personnel Chief (DEEDY) callously informed the Complainant that WHEN HE REPORTED FOR WORK DID NOT MATTER and that his on-the-job time from May 18, 1981 until May 31, 1981, was void and would not count as a part of the work test period and was JUST lost time (tenure and leave time).

25. Complainant informed the Personnel Supervisor (DEEDY) that being appointed in an emergency status was not his fault and that

such an appointment was only for the "administrative convenience" of the division and was damaging to his status (work test period, leave and tenure). Additionally, the Complainant advised the Respondent Personnel Chief (DEEDY) that irregardless of the reasons for the illegal appointment, Rule 11.103 (EXHIBIT B20) and Rule A.302 (EXHIBIT B20.5) (Also see Regulation B, EXHIBIT B27) stated that the work test period and the length of service shall begin on the first day that the employee actually reports for work, and that it was not his fault for what they had done wrong. The Respondent refused to acknowledge the facts and stated that "whether or not it was your fault or not doesn't matter." The Complainant advised the Personnel Chief (DEEDY) of his thoughts concerning her callousness and the unfairness of the DHR and DFACS bureaucracy.

26. Complainant was later advised by another employee that he had erred by challenging the Respondent Personnel Supervi-

sor (DEEDY) in her domain and telling her that she was wrong and that "she (DEEDY) will get you.

27. After the callous remarks of the Respondent Personnel Chief (DEEDY) and on the same day (October 5, 1981), by memorandum, and as the result of Respondent's callous remarks, Complainant prepared and sent a memorandum restating his position concerning the rules pertaining to when his work test period and when his length of service should have begun.

28. Respondent DEEDY sent the Complainant a memo (Exhibit E) and quoted to the complainant every "contiguous" paragraph in Rule 11 that she felt could be used as "against" the Complainant. She was , however, presumptuous in concluding that Complainant could not also read and she, therefore, conveniently, did not quote to him the paragraph (11.103) that supported his position form the same chapter and verse that she had used to deny his request (see Respondents memo and

compare it with what is contained in the rule at Exhibit B20). She simply denied Complainant his rights and benefits afforded him by the rules.

29. In the same letter in which she denied him his length of service, tenure, and additional accruable rights based on the provisions of Rule 11 (Rules 11.100 and 11.101) she very conveniently ignored referring to Rule 11.103 which was in my behalf --- "the work test period shall begin with the first day on which the employee actually reports for work." Secondly, no exception is provided for any appointment category, e.g., emergency, regular, etc.

30. Since the Complainant was terminated "only" 18 days later, it appears that the Respondent Personnel Chief (DEEDY) was offended or felt "threatened" by the content of Complainant's memorandum and the facts; and since the "black" Deputy Director was now gone, it is reasonable to presume that this might have been the catalyst that MOORE had

finally set up and waited for it to develop. They jointly moved to terminate him and to restrain his first amendment rights (to shut him up before he could get to the Merit System with his complaint).

31. At this point it should be noted that although the Complainant was only a work test employee and in addition to his being assigned the duties of the other unit employees , he was also unfairly assigned the responsibilities of his supervisor (FOX) during her many periods of absence when there were senior white females in the unit.

32. On October 16, 1981, Complainant's supervisor (his immediate supervisor, Respondent FOX) returned to work. She was advised of the development and DEEDY's refusal to acknowledge and correct the error. Respondent FOX sided with the Respondent Personnel Chief (DEEDY) in spite of the fact of Rule 11.103 and Rule A.302. She even called the Complainant into her office and reprimanded him that it was "unappropriate" (her word) for him

to express his case (referring to the Complainant Telling Respondent DEEDY that she was wrong...) because "She (DEEDY) is very nice".

33. At this point, Complainant advised her (Respondent FOX) that as far as his health and rights were concerned, he did not care how nice she was supposed to be if she was wrong. and that he would always speak up when it came to his family , his health and his rights and that he would have more to say on the subject to others (meaning the Merit System using the grievance procedure).

34. On the same day, October 16, 1981, immediately following the reprimand given by Respondent FOX, Complainant returned to his office and prepared the first draft of his grievance for submission in accordance with regulations. Regulation F.101 (EXHIBIT B29) affords grievance to "all" employees of the classified service. Regulation F202 (EXHIBIT B29.5) also defines a grievance (as applicable to all covered employees) as a claim initiated alleging "his employment has been adversely

affected by unfair treatment... erroneous or capricious interpretation or application of agency policies and procedures or the rules and regulations of the State Personnel Board". Regulation F.402.2 (EXHIBIT 29.55) established that the filing cut-off date and that it must be in writing and delivered to the appropriate superior within 15 days after the occurrence upon which the grievance is founded or within 15 days after the employee became aware of the problem.

35. Complainant was terminated before the 15 day time-limit had elapsed, and was not afforded a chance to submit his grievance.

36. For many years this has been the "trick" that they have used to get rid of people while at the same time , surpressing any Complainant against themselves. They know that regulation F.103c (EXHIBIT B29) states that "employees who have been notified of termination" are presumed not to have a right to file a grievance, therefore, they use the ploy of giving "quick", so-called "advanced"

notice like one day to kill his rights.

37. It is what they did not know or consider is the facts conveyed by the term "occurrence" and the phraseology of "awareness of a problem in paragraph F.402.2 (EXHIBIT B29.55) that are tied to a 15 day time limit....."termination" is an occurrence and it is also the point-in-time of an awareness of a promlem; therefore, the 15 day clock continues to tick even after termination.

38. Complainant completed his first and second drafts of his grievance and was prepared to discuss the grievance with his supervisor (Respondent FOX); however, his supervisor avoided her office during office hours from October 19-22, 1981. When Complainant asked of her whereabouts, he was informed that she was downtown in conference with Respondents MOORE and DEEDY; therefore, since Complainants supervisor conveniently made herself unavailable to the Complainant, and Complainant was unable to submit his grievance within the authorized time limit to his super-

visor.

39. His rights to a grievance were circumvented by Respondent FOX being in secret meetings with Respondents MOORE and DEEDY. Rule F.103 (EXHIBIT B29) establishes that there will be "no reprisals for grievances and requires resolution at the "lowest" possible step --- meaning his immediate and first-line supervisor".

40. Sometime between October 19, 1981 and October 22, 1981, a meeting(s) was held at which time it was decided by Respondents that Complainant's employment would be terminated. By the best information available to Complainant it can be reasonably presumed that the prolonged absence of Respondent FOX away from her office was directly related to the termination meeting(s) and/or arranged to prevent him having the opportunity to file his grievance with his supervisor (FOX). The termination meeting(s) were designed to deny Complainant his grievance opportunity. His termination was "engineered" by Respondent

MOORE, FOX, DEEDY and JOHNSON who convinced themselves, in a vacuum, ("groupthinking") and where they conceived their self-serving "mandate" to "get him".

41. On October 22, 1981, Complainant was called and told to report for a conference with Respondent MOORE. Upon his arrival at MOORE's office, Complainant was greeted by Respondent MOORE and FOX. This was the first time the Complainant had seen Respondent FOX since October 16, 1981. It was at this meeting that Complainant was told by Respondent MOORE that he was being terminated the "very" next day (October 23, 1981) with no additional "advance" notice other than the "hours" being given.

42. Complainant attempted to advise Respondent MOORE and FOX of the facts of the situation concerning the rules and regulations, but was cut short because they had already confirmed their "preconceived notions" to terminate Complainant and had already arranged approval of his release and had al-

ready prepared his notice for release.

43. Complainant was suspicious of their sudden and "one-sided" attitude because he felt that they knew that in accordance with Rule 12.301.1, advance notice, in writing, was required for separation (EXHIBIT B21); this rule does not say what constitutes "advance" notice; therefore, Complainant's rights to be heard, by means of the Respondent's conspiracy and quick action, were "crudely" yet effectively circumvented.

44. On October 22, 1981, at the conference, Complainant was offered the opportunity to resign (Now, why would a lowly work test employee be encourged/asked to resign?). Complainant refused to resign and stated to Respondent MOORE and FOX that the official reasons for his termination had better be properly stated in the official notification of termination.

45. Also, In violation of Georgia Law, the portion of the official notice of termination was left blank (see EXHIBIT I).

46. They also ignored and suppressed the following rights provided for by regulations:

> Any employee who believes that the rules are working an unnecessary hardship on him, or believes that the efficiency or effectiveness of the service would be improved may petition for relief. (Rule 3.103, Exhibit B11.) I was not given the chance/opportunity to submit a grievance.

47. Complainant returned to his office and continued his duties and because he had been denied the opportunity to present his written grievance to his immediate supervisor and realizing the precarious position in which he had been placed by the Respondents, he dispatched his "intent" of grievance (EXHIBIT F) buy the most expeditious means that he could think of in an attempt to protect his right of 15 days. Also upon his departure, Respondent FOX informed Complainant that he could take the rest of the day and the day of termination off.

48. Complainant did not accept the time off and returned to his office and resumed his duties. For the remainder of that day, Respondent FOX avoided her office just as she had

done for the entire week.

49. On October 22, 1981, at approximately 5:00P.M. after everyone else had departed work, Respondent FOX "finally" returned to our office complex. Complainant advised her of how unfair and wr ng the pending termination was and informed her that based on his his rights (expressed and implied) contained in the State of Georgia's Merit System Act and the Merit System, Rules and Regulations that he would forget the events of the day and that he would be present for duty on October 23, 1981 and at all times thereafter. Complainant thought that they would see the wrong of their actions and would correct it before any damage was done. Complainant witnessed Defendant FOX making a telephone call.

50. On the same day, October 22, 1981, at approximately 5:30P.M. Complainant received a call from Respondent MOORE. Respondent MOORE "threatened" Complainant with "bodily" removal from the public building by force. Complainant noted the threat without commenting

on it; however, Complainant did ask Respondent MOORE for the reason that he was being terminated. Respondent MOORE responded: "DIANA can't manage things over there." Complainant responded: "Well TRUMAN, you are firing the wrong person then, aren't you?" Respondent MOORE responded: " WE'VE GOT TO PROTECT DIANA". Complainant could not believe what he had just heard. However, Complainant recalled the "high" attrition rate for black males in the Planning and Evaluation Unit just prior to MOORE's reorganization and immediately thereafter. Complainant knew that he had been had by MOORE just like "all" of the "males" before him had been attrited.

51. On October 23, 1981, the effective day of the termination, Complainant was called by the DFACS Deputy Director, Respondent GREENWELL. GREENWELL stated that he wished a conference with Complainant and wished to hear of Complainant's observations. Complainant agreed and the conference was at 2:00.

52. During the conference, Complainant

told the Respondent GREENWELL of his efforts to improve the operation of the DFACS and the planning for the Welfare programs.

53. Also, during this conference, Complainant also showed to Respondent GREENWELL the draft of his grievance that he had prepared a week earlier, but was unable to present to Respondent FOX due to her hiding out at the downtown office all week long.

53.5 An important point to remember is that Complainant worked on just about every weekend during his work test period.

54. At the conclusion of the conference with Respondent GREENWELL, Respondent GREENWELL asked Complainant would he stay on if he could serve in another position in DFACS. Complainant responded with "yes". However, Complainant also advised him that considering the events and the circumstances surrounding the termination efforts of his current management team, it would not be a good idea to serve under the same team." The conference was concluded with Respondent GREENEWELL

stating that he could promise nothing, but would see what he could do, and would let Complainant know on Monday (October 26, 1981).

55. At 9:30 A.M. on October 26, 1981, Respondent GREENWELL arrived at Complainant's office and informed him that he was terminated and requested that Complainant leave the building. Respondent GREENWELL provided for assistance in getting Complainant's belongings packed and loaded in his car.

56. Complainant's termination was effective October 23, 1981. However, official written notification of the termination was not provided Complainant until October 26, 1981. Two rules clearly state that a person being terminated "... shall be notified in writing, in advance" (EXHIBITS B20 and B21).

57. At 9:35 A.M. on October 26, 1981, Respondent GREENWELL also discussed the content of what was to be a "series" of official notices of termination (EXHIBIT G). It should be noted that this letter was served on Complainant on October 26, 1981, as confirmation

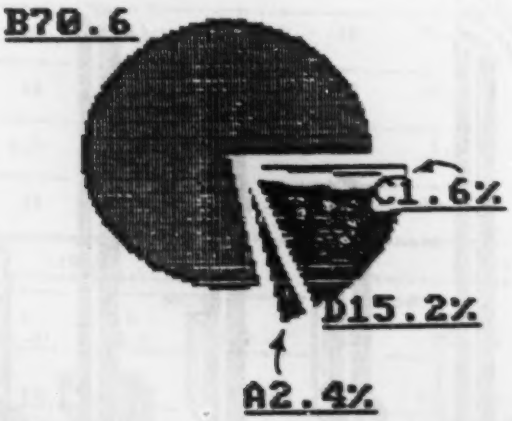
for his termination. The letter stated that your working test dismissal ... was effective on last Friday, October 23, 1981." This statement is, in fact, a retroactive and an illegal dismissal.

APPENDIX E

(NOTE: EXCERPTS FROM THE MOTION FOR RECONDIDERATION SUBMITTED TO JUDGE SHOOB. CONTAINED MANY OF THE RULES AND REGULATIONS SUBMITTED WITH COMPLAINT, AND THE LENGTH OF THE COMPLAINT WAS COMPLAINED ABOUT BY RESPONDENTS).

SEE CONSOLIDATED FOOTNOTES APPENDED HERETO.

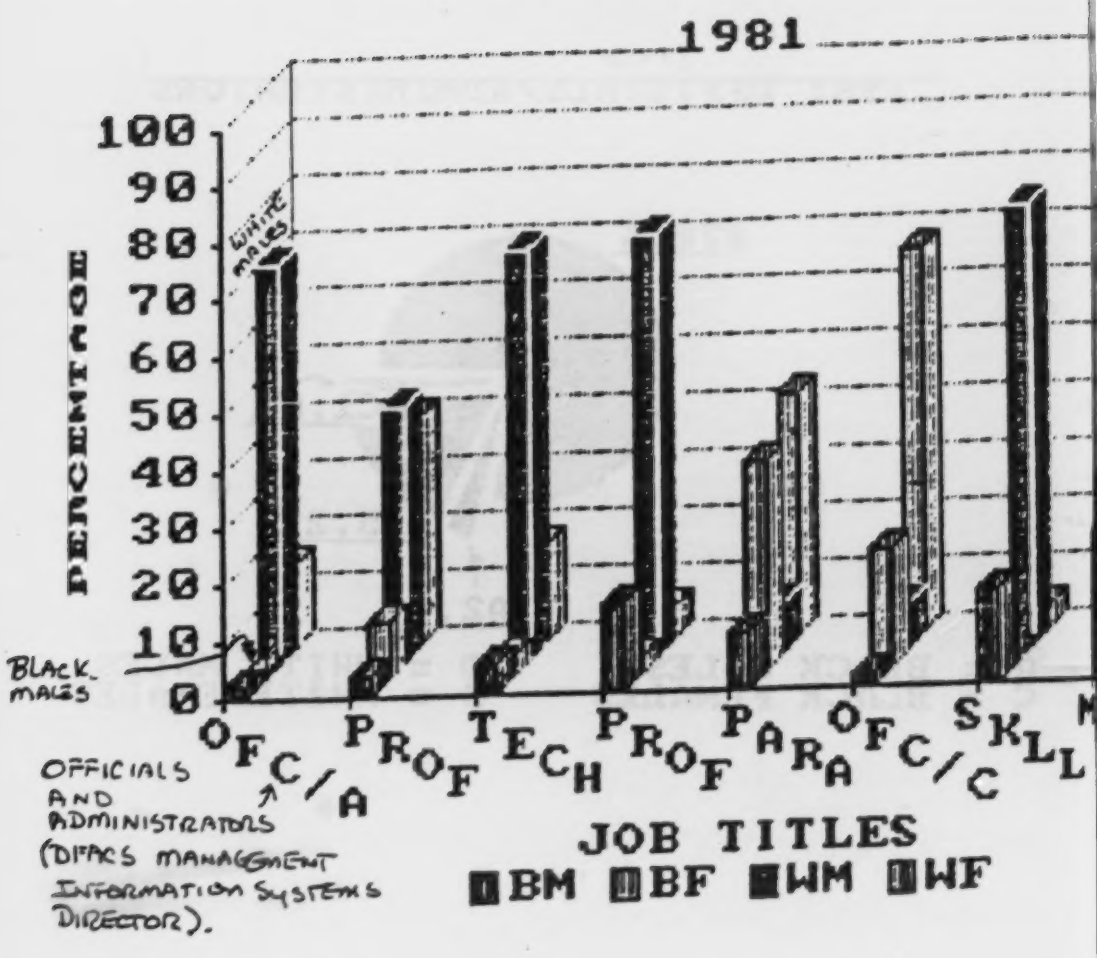
STATE
1981 OFFICIALS/ADMINISTRATORS



A = BLACK MALES B = WHITE MALES
C = BLACK FEMALES D = WHITEFEMALES

Figure 2.

STATE-WIDE CHART



OFFICIALS AND ADMINISTRATORS (DIRECTOR MANAGEMENT INFORMATION SYSTEMS DIRECTOR).

% STATE DISCRIMINATION STAFFING PATTERNS
WORKFORCE: 52,143,28% BLACK=9,567 WOMEN & 5,244 MEN
55% OF MAINT/SERV JOBS=BLACKS; 82% BLACKS EARN LESS THAN $14,500 PER YR.

	1979				1980			
	BLACK		WHITE		BLACK		WHITE	
	M	F	M	F	M	F	M	F
OFFICIALS ADMIN.	2	1.3	71	16	2.4	1.6	71	15.3
PROFESS	3.7	8.5	48	39	4	9.5	46	40
TECH	4	3.4	75	17	5	4	74	17
PROF. SVC	14	2	79	4.7	13	2.4	79	5
PARA. PROFESS.	11	38	11	41	10	36.7	9	43.4
OFFICE/ CLERICAL	3	18	9	70	3	19.7	9	68
SKILLED CRAFT	16	1.8	79	3.5	16	1.6	78	4
MAINT./ SERV.	25	28	34.6	11.6	25	29.4	32.7	12

	1981				1982			
	BLACK		WHITE		BLACK		WHITE	
	M	F	M	F	M	F	M	F
OFFICIALS ADMIN	2.4	1.6	70.6	15.2	1.8	1.6	72.3	14.6
PROFESS.	4	10	45	40	4.5	10.7	44	40
TECH.	6	4.5	72	17.3	6	5	70	18
PROF. SVC	16	3.6	74	5.5	18	4	71.5	5.6
PARA. PROFESS.	10.6	37	9.2	42.6	10.6	37	9.3	42
OFFICE/ CLERICAL	2.7	21	8.2	67	2.8	23	7.8	65
SKILLED CRAFT	16.8	2	77	4	17.6	1.6	76	4
MAINT./ SERV.	25.8	30.4	31.5	11.4	26	30	31	12

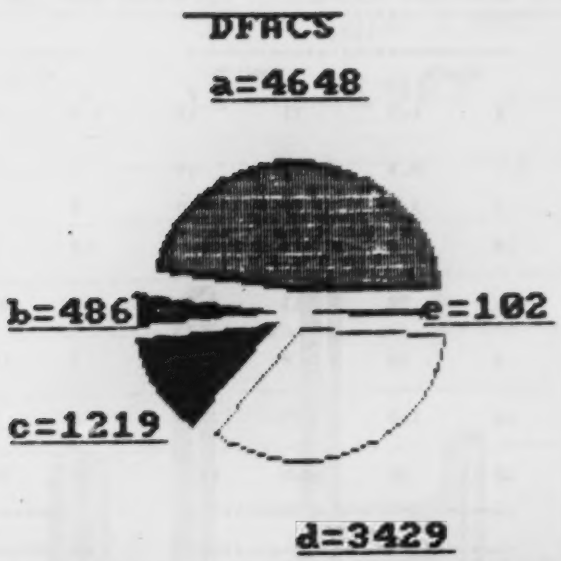
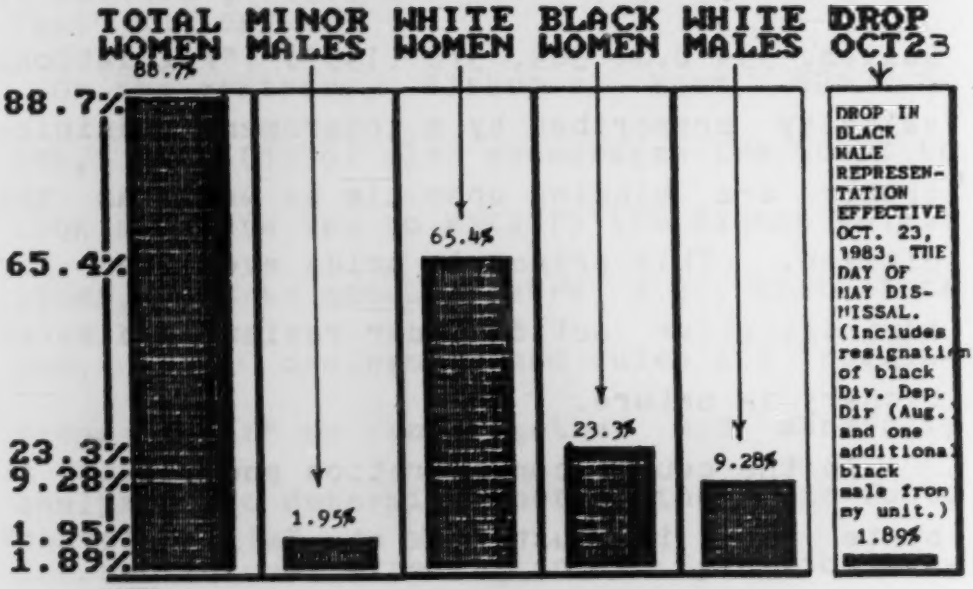

DFACS
a=4648
b=486
e=102
c=1219
d=3429
A = TOTAL WOMEN
B = WHITE MALES
C = BLACK FEMALES
D = WHITEFEMALES
E=MINORITY MALES

Figure 19.

DFACS WORKFORCE (AS OF JUNE 30,1981)



NOTES:

1. WHITE FEMALE HIRED AS MY REPLACEMENT IN THE PLANNING AND EVALUATION UNIT. UNIT AT 100% FEMALE AFTER TERMINATION OF BOTH BLACK MALES OVER A [illegible] MONTH PERIOD.
2. WHITE FEMALE HIRED AS TRAINING COORDINATOR.
3. WHITE MALE HIRED AS DIR. MANAGEMENT INFORMATION SYSTEMS.

The rules and regulations and any interpretation of the rules must be consistent with the law. When a rule or regulation is contrary to the law, the regulation is invalid. Interpretation of the rules and regulations that have the effect of law, must be "reasonably" consistent with the Accardi v. Shaughnessy, 347 U.S. 260 (1954); Service v. Dulles, 354 U.S. 363, 372 (1957) ("regulations validity prescribed by a government administrator are binding upon him as well as the citizen. This principle holds even when the administrative action under review is discretionary in nature.

In the courts consideration and looking at state law, it must look at "all relevant" state law during the determination process. State law clearly states that "no" employee under the Merit System Act may be subjected to adverse actions affecting 4 status. The law contains no special "qualifiers" for the term (FOOTNOTE 4) "No employee."

Since public officials are expected to

know what the law (rules and regulations are derived from these laws), says they are also expected to know that Bishop does not automatically confer upon them authority that they do not have... they only have the authority that the law gives, no more; Nor does Bishop automatically confer authority of the "Harsh Fact" analogy.

On the contrary, Bishop v. Wood, 426 U.S. 345, 344 (1976) also encourages the Court to look at state law to satisfy the Bishop guidelines, courts should insure, e.g., that state law, local ordinances and rules and regulations "must" be read together and carefully analyzed to determine whether they, in fact, create "mutual" expectations. (Specific "disparate treatments" that were brought:)

1. I was assigned an inordinate volume and a multitude of varied work assignments, including office messenger boy and moving office furniture, and being assigned the work assignments of the white females in the unit; while the white females were allowed to

specialize,or do only one thing, or do nothing.

2. A "working test" implies a presumption of training (FOOTNOTE 5) as a pre-condition for evaluation.

3. Also, being the newest member of the unit and junior to all females in the unit. I was assigned the supervisory responsibilities of my female supervisor (the Supervisor of the Planning and Evaluation Unit), in the absence of the incumbent who was away from her job during most of (FOOTNOTE 6) my "evaluation" test period.

4. Contrary to three different rules, I was not given benefit credit for all of my time spent on the job, 2, 3, and 4, and I was ostracized for asking defendants to correct my record from June 1 to May 18.

5. Although qualified (Exhibit A1), I was not given the opportunity to compete for the position as the Director of Management Information Office, Division of Family and Children Services. I was already on board and they

knew of my qualifications, but a (FOOTNOTE 11) white male was hired from outside of the division.

6. Although better qualified than the job announcement required, I was denied the opportunity to interview for a Division of Family and Children Services Training Coordinator. I was already on board but a white female from outside of the division was (FOOTNOTE 11) hired.

7. By comparison to Mr. Albitz, I find myself similarly situated (1) Mr. Albitz's background is data management based... initially hired as a programmer. (2) My background includes a data management base (Exhibit A1). (3) Mr. Albitz was ostracized and discharged for compiling data and providing it to the EEOC. (4) I compiled data critical of the division's operations, staffed it, (FOOTNOTE 12) and was ostracized for it.

8. The only difference in my situation and Mr. Albitz's situation is that: (1) Mr. Albitz is white and I am black. (2) Mr. Albitz

was discharged and manipulated over a five year period; mine was "orchestrated" in only four months and 23 days.

9. I voiced my dissatisfaction (FOOTNONE 13) concerning why I was not considered for the jobs and why my records were 14 and 15 not corrected and I was ostracized for it.

10. Although the rules and regulations and law permit filing of a grievance while in the system, I was not permitted the opportunity (FOOTNOTE 15,16,17,18,19,20,21, and 21) to file. (FOOTNOTE 25).

11. Considering the Cleopatra syndrome...don't shoot the messenger even if you don't like what he said, (FOOTNOTE 23) upon discharge, I was not permitted to file even though there was a filing "expectation".

12. A disparate treatment discharge/ dismissal/ termination is not authorized. (FOOTNOTE 24) Although the "preponderance" (FOOTNOTES 15,16,17,18,19,20,21, and 22) of the rules permitted grievances and appeals (in-

cluding the discharge itself) ONE SPECIAL PURPOSE RULE was heavly relied on to prevent me from filing a disparate treatment grievance/appeal. I was discharged and not allowed any right to appeal the disparate treatment or the discharge. (FOOTNOTE 25)

13. All black males connected with the operations of the Planning and Evaluation Unit were discharged by the Director of the Office of Administration and Management at one time or another.

14. My discharge, however, was held in abeyance until after the Division of Family and Children Services Deputy Director (a black male...also a retired Lt. Col) resigned to take another position.

15. A top level Merit System Official (black male) who came to my aid was also "forced" out of his position at approx. 6 months after my discharge.

16. I requested a copy of my files. I was denied a copy of documents in my files (FOOTENOTE 26), including the results of my

discrimination complaint that I filed. (Complaint filed with GA Office of Fair Employment Practices after discharge) of I was later provided the one document in my personnel file and "charged" a fee for it.

15. I sought continuing avenues of appeal and employment with defendants and other agencies of the defendant state and was rejected.

16. Although qualified, I was denied an opportunity for a top level job by the Merit System and an entry level job by the Department of Human Resources.

Among others, in addition to the expectation that the work test would be the "standard" six months and plaintiff would have the right to appeal "disparate treatment", the Court must also look at "another" state law (Section 6a, Georgia Employment Security Law) which requires that the employer give "reasons for separations." A reason was not given (Exhibit H).

Standard Operating Procedures (SOP) pat-

terns of discrimination can also be found in the case of Marvin Albitz v. State of Georgia, CA79-634A, and in the Memorandum "Evaluation of Discrimination Charges", dated November 26, 1974. Mr. Albitz (white) prepared this memo and was dismissed almost five years later for its preparation. I was dismissed within weeks of being discriminated against.

SUMMARY:

Prima facie for jobs and testing is well settled. By its terms alone, 1983 imposes liability upon every person and prohibits a deprivation of "any" rights and privileges, not only secured by the Constitution, but also"laws".

> "every person" who, under color of state law or custom (SOP) "subjects or causes to be subjected, any citizen of the United States...to deprivation of any rights, privileges, or immunities secured by the Constitution and laws."

The Supreme Court of the United States has examined the history and purposes of this section in Monroe v. Pope, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2 492 (1961). The Court identified three purposes of this section:

1. The overriding of particular state laws:

2. The provision of a remedy when state law (State House Bill 348) (will not be) was inadequate; and 3. The creation of a federal remedy when the state remedy, though adequate in theory, (rules and regulations) was not available in practice."

Likewise, in Williams v. Codd, 459 F. Supp. 804 (S.D.N.Y. 1978), 42 U.S.C.A. 1983, which was intended for the protection of personal liberties rather than the protection of property rights with respect to any personal liberties which may have been violated, a plaintiff must show at a minimum:

a. deprivation of due process, that is, deprivation of the fundamentals of fair play;

b. discrimination, e.g., discrimination on the basis of race or religion; or

c. clearly unreasonable, arbitrary, or capricious action. See Estrban v. Central Mississippi State College, 415 F. 2d 1077 (1979);

d. And, it is not necessary to find that

the defendants had any specific intent to deprive the Plaintiff of his civil rights (see Pierson v. Ray, 386 U.S. 547 (1967); Roberts v. Williams, 456 F. 2d (5th Cir. 1971); Whirl v. Kern, 407 F 2d 781 (5th Cir. 1968); Skehan v. Board of Trustees, 538 F. 2d 53 (3rd Cir. 1976 (en banc)) Navarette v. Enomoto, 536 F. 2d 277 (9th Cir. 1976).

FURTHERMORE, NONTENURED EMPLOYEES, WHILE THEY MAY LACK SUCH "PROPERTY" INTEREST, NEVER-THE-LESS HAVE A "LIBERTY" INTEREST IF "STIGMA-TIZED" BY THE ADVERSE ACTION AND WOULD THERE-FORE ALSO HAVE A DUE PROCESS RIGHT; and being stigmatized varies from one person to another and varies from one "ethnicity" to another. In other words, what is "stigmatizing" for one, may not be stigmatizing to or for another. Due process requirements demand:

1. that an employment decision (including a decision not to employ) which adversely affects the employee <u>not be discrimina-tory, arbitrary, or capricious</u>;

2. that it be based upon substantial evidence; and

3. that the grounds for the decision bear some reasonable relationship to the nature of the employment.

A conspiracy exists when two or more per-sons reach an understanding to accomplish some

unlawful purpose, or to accomplish some lawful purpose by unlawful means. The understanding between the members need not be an express or formal agreement. Thus, the existence of a conspiracy may be inferred from a series of events and may be proved by circumstantial evidence (see Ruthledge v. Electric Hose and Rubber, 327 F. Supp. 1267 (C.D. Calif. 1971); Adickes v. S. H. Kress Co., 398 U.S. 144 (1970); Hoffman-LaRoche, Inc. v. Greenberg, 447 F. 2d 872, 875 (7th Cir. 1971); El Ranco, Inc. v. First National Bank of Nevada, 406 F. 2d 1205 (9th Cir. 1968).

42 U.S.C. 1983 provides a private, federal remedy for persons deprived of federal rights under color of state law. And, as addressed earlier, it may be asserted for punitive and compensatory damages and a jury trial.

Public officers are "expected" to know what the law says. A failure of government officials to follow state or local law will constitute a denial of due process if a liberty interest Damages are available

against an official in his individual capacity. In Wood v. Strickland, 420 U.S. 308, 95 S.Ct. 992 (1975), U. S. Supreme Court set forth a formulation for judging an official personally liable for actions taken while discharging his official responsibility:

> "...If he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the (individual) affected or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the (individual)." 85 S.Ct. at 1001.

During reconsideration the court is also requested to review the indications of how the so-called rules are straightforwardly, straight facedly, stringently and strategically stratified to solidify my discharge, as a retaliatory discharge is in violation of state rules and regulations, not to mention law: Workmen's Compensation Act and: Albitz v. State of Georgia, CA79-634A, No. Dist. of Georgia; Great American Federal Savings and Loan v. Novotny 60 L. Ed 2d 957 (1979); Hochstadt v. Worchester Foundation, 545 F. 2dd

222 (1976); Pantchenko v. C. B. Dolge Co., 581 F. 2d 1052 (1978); Eichman v. Indiana State University Board of Trustees, 597 F. 2d 1104 (1979); Sias v. City Demonstration Agency, 588 F. 2d 692 (1978); Blake v. City of Los Angeles 19 FEP 1441 (1979).

I am requesting that you please reconsider your decision to dismiss my claim, allow it to be amended as follows:

1. Based on the above grounds, reinstate my complaints in its entirety, including my demand for a "jury trial."

2. Withdraw the judgment against me.

(The motion continues with other requests.)

I apologize to the court if I, in any way contributed to the confusion created by the state. My assistant and I are learning and promise to try to do better in the future.

Respecfully submitted,

Roland A. Jones

CONSOLIDATED FOOTNOTES

2
Purpose of the Merit System Rules and Regulations.

"...To implement and to give effect to the provisions of Article IV, Section 6, paragraph I of the State Constitution of 1976, and of the Merit System Act (Georgia Laws, 1975, p. 79.

3
The Rules and Regulations of the State Merit System have the force and effect of law.

4
GA. LAW, 1975, Section 7. Adverse Actions, Appeals and Hearings.

> "No (emphasis supplied) employee of any (emphasis supplied) department who is included under this Act or hereafter included under its authority and who is subject to the rules and regulations prescribed by the State Merit System may be dismissed from said department or otherwise adversely affected as to compensation or employment status except for good cause..."

5
No work test evaluation standards in or by the rules and regulations.

6
Wright v. National Archives and Records Services, 609 F.2d 702 (1979) McDonnell Douglas test for finding a prima facia case "must certainly be adaptable to claims of unequal training opportunities..." (FOOTNOTE 7,8,9, and 10).

7
Merit System Commissioner's Seminar instructions.

In reading the rules and regulations, look for key words: shall/will -- this indicates that the instructions given in the particular rule or regulation must be done. Day -- unless otherwise specified, is interpreted to be a calendar day.

8
WORK TEST RULE 11.103, pg. 37, Merit System Rules and Regulations.

"The working test period shall begin with the first day on which the employee actually reports for work..."

9
SALARY RULE A.302, pg. 56.

"The length of service shall begin with the first day on which the employee actually reports for work..."

10
LEAVE AND HOLIDAY RULE B.201.1, pg. 61.

"The length of service shall begin on the first day the employee actually reports to work;"

11
McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), among others.

(a) he is a member of a racial minority,

(b) he was qualified for the position the employer was trying to fill,

(c) although qualified for the position, he was rejected,

(d) the employer continued to seek and hired applicants with complainant's qualifications.

12

Marvin Albitz v. State of Georgia---CA79-634A, No. Dist. Ga.

13
The First Amendment to the U.S. Constitution.

14
Rule 14. Appeals and Hearings.

PAR. 14.211. Unjust Coercion or Reprisal. An employee who is subjected to unjust coercion or reprisal because of his participation in an appeal or grievance proceeding authorized by these Rules and Regulations may appeal for relief to the Board as provided in Section 14.100; provided, however, that if administrative remedy for the coercion or reprisal is available through the department grievance procedure as outlined in Regulation F, the employee shall first seek such remedy and may appeal to the Board only at the conclusion of the procedure.

15
Rule 14. Appeals and Hearings.

PAR. 14.204. Unjust Discrimination Against an Employee. An employee who believes he has been unjustly discriminated against in employment because of political or religious opinions or affiliations, race, color, sex, national origin, age, or physical handicap may appeal to the Board as provided in Section 14.100; provided, however, that if administrative remedy for alleged discrimination is available through the departmental grievance procedure as outlined in Regulation F, the employee shall first seek such remedy and may appeal to the Board only at the conclusion of the procedure.

16
Regulation F. Employee Grievance Procedure, PAR. F. 202

Grievance. A grievance shall be defined as a claim initiated by an eligible employee alleging his employment has been adversely affected by unfair treatment, unsafe or unhealthful working conditions, erroneous or capricious interpretation or application of agency policies and procedures or the Rules and Regulations of the State Personnel Board, or allegations of unlawful discrimination because of race, color, sex, national origin, handicap, age, or religious or political opinions or affiliations.

17
Regulation F. Employee Grievance Procedure.

PAR. F. 402.2. Filing Cut-Off Date. Grievances shall be filed in writing and delivered to the appropriate superior within 15 days after the occurrence upon which the grievance is founded, or within 15 days after the employee became aware of the problem.

18
Rule 14.

PAR. 14.101. Unless a different time period is specifically provided, appeals must be filed within 15 calendar days after: (1) the employee receives written notice of the action or decision; or (2) the effective date of the action or decision, which ever is later.

19
Regulation F. Employee Grievance Procedure.

PAR. F. 203. Filing is the act of an employee notifying the appropriate superior in writing that he is initiating a grievance.

20
Regulation F. Employee Grievance Procedure.

PAR. F.105. Disseminating of Policies and Procedures. The appointing authority of department head shall take reasonable steps to "ensure" that information concerning this Regulation and agency policies and procedures which pertain to grievances and appeals are disseminated to all employees.

21

PAR. 14.212. Other purported violations of the Rules and Regulations. A person who feels that there has been a violation of the Rules and Regulations or the Merit System Law which adversely affects high rights may appeal to the Board under this provision if the appeal right is not covered elsewhere in these Rules and Regulations. The appeal must be filed within 30 calendar days after the occurrence of the alleged violation.

22
Rule 3, Merit System Rules and Regulations.

PAR. 3.102 Petitions to the Board. Any employee in the classified service or other citizens of the state who believes that the rules are working an unnecessary hardship on him...

23
Regulation F. Employee Grievance Procedure.

PAR. F. 105. Improper use of official authority. No person shall directly or indirectly use or threaten to use any official authority or influence to discourage an employee from exercising his rights as provided in this regulation.

24
Rule 3, Merit System Rules and Regulations.

No person shall be appointed or promoted

to, or demoted or dismissed from, any position under the Merit System, or in any way favored or discriminated against with respect to employment under the Merit System because of his political or religious opinions or affiliations; nor shall there be any discrimination in favor of or against any applicant or employee because of race, color, sex, age, physical handicap, or national origin.

25

Section II, A.6.a, DHR Employee Complaint Procedure.

Employees who have been notified of employment termination are not eligible to file a grievance.

26

Rule 3, Merit System Rules and Regulations.

An employee, upon application, may review the contents of his personnel file and copy or duplicate all or any portion thereof during scheduled office hours. While the rules and regulations are improperly enforced to confirm my discharge, they are contravened and "favorably" mixed as "Apples and Oranges" as "not to ruin the career" of a convicted white male (Exhibit I). Other examples of disproportionate and disparate treatment which are indications of "standard operating procedures" for the State (Teamsters v. United States, 431 U.S. 324 - 1977) are provided for your information at page 28, herein.

27

Rule 3, Merit System Rules and Regulations.

Section 3.200. CONFORMITY WITH FEDERAL STANDARDS. As provided in Section 5(b)(3)(i) of the Act these rules and regulations shall conform to the minimum standards for Merit Systems of personnel

administration as specified by those federal departments from which federal funds are obtained for use by the several state departments covered by the law.

APPENDIX F

REFERENCES FOR MAIN TEXT NOTES AND MERIT SYSTEM RULES AND REGULATIONS

(Note: All of the below information was submitted to the U. S. Court of Appeals.)

1/ Rule 11, Section 11.100. WORKING TEST: "The working test period will be the first six months..."

2/ Reg D.601.1: Retention credits shall be based upon length of service.

3/ Merit System policy as announced by the commissioner: "In reading the rules and regulations, look for key words: shall/will--this indicates that the instructions given in the particular rule or regulation must be done".

4/ WORK TEST RULE 11.103, pg. 37, Merit System Rules and Regulations: "The working test period shall begin with the first day on which the employee actually reports for work..."

5/ SALARY RULE A.302, pg. 56: "The length of service shall begin with the first day on which the employee actually reports for work..."

6/ LEAVE AND HOLIDAY RULE B.201.1, pg. 61: "The length of service shall begin on the first day the employee actually reports to work;"

7/ Purpose of the Merit System Rules and Regulations: "...To implement and to give effect to the provisions of Article IV, Section 6, paragraph I of the State Constitution of 1976, and of the Merit System Act (Georgia Laws, 1975, p. 79). "The Rules and Regulations of the State Merit System have the force and effect of law.

8/ GA. LAW, 1975, Section 7. Adverse Actions, Appeals and Hearings: "No (emphasis supplied) employee of any (emphasis supplied) department who is included under this Act or hereafter included under its authority and who is subject to the rules and regulations prescribed by the State Merit System may be dismissed from said department or otherwise adversely affected as to compensation or employment status except for good cause..." to my own. (They became upset when I started to object).

9/ No work test evaluation standards in or by the rules and regulations.

10/ Rule 12.301.1. Provides that "The employee shall be notified in writing in advance of the separation but the separation cannot be appealed except as otherwise provided in these rules".

11/ Rule 11.202A: For an employee serving in a working test period, the appointing authority shall notify the employee in writing in advance of the date on which his services are to be terminated.

12/ It is the Policy of the State Personnel Board that every employee eligible to file and employees shall be free to use the grievance without fear of reprisal (Regulation F.103, Pg. 91).

13/ Rule 3, Merit System Rules and Regulations. No person shall be appointed or promoted to, or demoted or dismissed from, any position under the Merit System, or in any way favored or discriminated against with respect to employment under the Merit System because

of his political or religious opinions or affiliations; nor shall there be any discrimination in favor of or against any applicant or employee because of race, color, sex, age, physical handicap, or national origin.

14/ Rule 3, Merit System Rules and Regulations: PAR. 3.102 Petitions to the Board. Any employee in the classified service or other citizens of the state who believes that the rules are working an unnecessary hardship on him...

15/ The Employee Grievance Procedure is applicable to all employees in the classified service (Regulation F.101, Pg. 91).

16/ A person who feels that there has been a violation of the Rules and Regulations of the Merit System Law which adversely affects his rights may appeal (Rule 14.212, Pg. 45B).

17/ "Access to the Grievance Procedure is a Right of employees, not just a privilege." (Para 1, Merit System Special Points Concerning Grievance).

18/ "An employee who believes he has been

unjustly discriminated against in his employment...may appeal to the Board..." (Rule 14, Appeals and Hearings).

19/ Rule 14. Appeals and Hearings: PAR. 14.204. Unjust Discrimination Against an Employee. An employee who believes he has been unjustly discriminated against in employment because of political or religious opinwhile the Merit System Rules require filing grievances through the departions or affiliations, race, color, sex, national origin, age, or physical handicap may appeal to the Board as provided in Section 14.100; provided, however, that if administrative remedy for alleged discrimination is available through the departmental grievance procedure as outlined in Regulation F, the employee shall first seek such remedy and may appeal to the Board only at the conclusion of the procedure.

20/ "A person who feels that there has been a violation of the Rules and Regulations or the Merit System Law which adversely affects his rights may appeal..." (Rule 14, para

14.212).

21/ Any employee who believes that the rules are working an unnecessary hardship on him, or who believes that the efficiency or effectiveness of the service would be improved by petitioning the Board (Rule 3.103, Pg.9).

22/ "A grievance shall be defined shall be defined as a claim initiated by an eligible employee alleging his employment has been adversely affected by unfair treatment...erroneous or capricious interpretation of agency policies and procedures or Rules and Regulations...or allegations of unlawful discrimination..." (Regulation F.202).

23/ Rule 14. Appeals and Hearings: PAR. 14.211. Unjust Coercion or Reprisal. An employee who is subjected to unjust coercion or reprisal because of his participation in an appeal or grievance proceeding authorized by these Rules and Regulations may appeal for relief to the Board as provided in Section 14.100; provided, however, that if administrative remedy for the coercion or reprisal is

available through the department grievance procedure as outlined in Regulation F, the employee shall first seek such remedy and may appeal to the Board only at the conclusion of the procedure.

24/ Regulation F. Employee Grievance Procedure: PAR. F. 105. Improper use of official authority. No person shall directly or indirectly use or threaten to use any official authority or influence to discourage an employee from exercising his rights as provided in this regulation.

25/ Appeals must be filed within fifteen (15) calendar days after: (1) the employee receives written notice of the action or decision; or (2) the effective date of the action or decision, whichever is later (Rule14.100).

26/ Rule 14. PAR. 14.101. Unless a different time period is specifically provided, appeals must be filed within 15 calendar days after: (1) the employee receives written notice of the action or decision; or (2) the effective date of the action or decision, which ever is

later.

27/ Regulation F. Employee Grievance Procedure. PAR. F. 203. Filing is the act of an employee notifying the appropriate superior in writing that he is initiating a grievance.

28/ Regulation F. Employee Grievance Procedure. PAR. F.105. Disseminating of Policies and Procedures. The appointing authority of department head shall take reasonable steps to "ensure" that information concerning this Regulation and agency policies and procedures which pertain to grievances and appeals are disseminated to all employees.

29/ Regulation F. Employee Grievance Procedure. PAR. F. 402.2. Filing Cut-Off Date. Grievances shall be filed in writing and delivered to the appropriate superior within 15 days after the occurrence upon which the grievance is founded, or within 15 days after the employee became aware of the problem.

30/ The Employee Grievance Procedure is to provide an orderly process for reaching a fair and equitable decision in a timely manner,

with his immediate supervisor, before a written grievance is filed (Regulation F.102, Pg. 91).

31/ PAR. 14.212. Other purported violations of the Rules and Regulations. A person who feels that there has been a violation of the Rules and Regulations or the Merit System Law which adversely affects high rights may appeal to the Board under this provision if the appeal right is not covered elsewhere in these Rules and Regulations. The appeal must be filed within 30 calendar days after the occurrence of the alleged violation.

32/ Sec. II, A.6.a, DHR Employee Complaint Procedure. Employees who have been notified of employment termination are not eligible to file a grievance.

33/ RE: "M", R. GRAY COVER: 1."Refusal to allow reasonable time to process a grievance is appealable." 2. "Refusal to hear a legitimate grievance is an appealable offense." 3. Any of the items listed as non-grievable become grievable if discrimination is charged or

if unjust coercion and reprisal is charged."

4. "Any disciplinary action, even if reasonable and justified, is grievable unless it is an adverse action. (Then it is appealable)".

34/ Rule 3, Merit System Rules and Regulations. An employee, upon application, may review the contents of his personnel file and copy or duplicate all or any portion thereof during scheduled office hours.

RULE 12.301.1. INVOLUNTARY SEPERRATION USE FOR BLACKS.

THE FOLLOWING ARE USED FOR WHITES:

35/ A working test employee may be demoted because of permanent status not being recommended (Rule 10.304.1, Pg. 34).

36/ Transfer the working test employee at any time from another position of the same class or from a position of a comparable class (Rule 10.201).

37/ Transfer the working test employee to

any vacancy of the same class (Rule 10.202).

38/ Transfer the working test employee to any vacancy of the comparable class as if the vacancy were of the same class (Rule 10.303).

39/ Demote the working test employee to a lower class (Rule 10.303).

40/ Demote the working test employee for unfitness to perform assigned duties, negligence or inefficiency, or for misconduct or insubordination, or whenever the appointing authority deemed it necessary by reason of shortage of work or funds or reorganization (Rule 10.304.1).

41/ Suspend the working test employee without pay for disciplinary purposes (Rule 12.502.2).

42/ Relocation of the working test employee (Rule G.302).

43/ Or for even more "serious" infractions, an employee serving a working test period following appointing may be suspended for disciplinary purposes and for more serious purposes such as pending civil or criminal court action (Rule 12.502.2, Pg. 41).

44/ "The requisites of fairness, promptness, and legal sufficiency can usually be satisfied by the disciplinary process known as "Progressive Discipline".(Appendix D, Pg. 111).

45/ "The usual sequence is oral reprimand, written warning, suspension, dismissal. Each step, therefore, moves closer to termination..." (Appendix D, Pg. 111).

46/ "... being careful to observe the procedural requirements..." (Appendix D, Pg. 112).

47/ "... the procedural requirements are critical and must be rigorously observed as a matter of law." (Appendix D, 3c, Pg. 112).

48/ "The importance of adhering to the procedures cannot be stressed too strongly as a deficiency in any respect may result in the action being reversed on appeal..." (Appendix D, page 113).

49/ "None of these actions, therefore, should be initiated without prior consultation with the Personnel Officer or other knowledgeable official." (Appendix D, Pg. 113).

APPENDIX G

(EXCERPTS) COMMISSIONER'S SEMINAR

Conducted By

Carson Melvin, Director
Division of Payroll Audit and Program Evaluation

RULE 3. GENERAL PROVISIONS

Prior to discussing the actual provisions of Rule 3, Carson Melvin gave a general overview of the rules and regulations. In this overview, he made some pertinent points in relation to reading and understanding the rules and regulations. They were:

1. The Rules and Regulations of the State Merit System have the force and effect of law.

2. Georgia is a common law state, that is to say one cannot act just because there is no prohibition in the law against the act. One has only the authority that the law gives, no more.

3. Public officers are expected to know what the law says.

4. There are several points to consider in reviewing the rules and regulations:

a. Where the rules are direct, take it for what is says; there should be no interpretation given.

b. Consider the intent of the rule.

c. Consider the above mentioned number one and two together.

d. The rules and any interpreation of the rules must be consistent with the law. When a rule or regulation is contrary to the law, the regulation is invalid and the law stands.

e. Interpretation of the rules and regulations must be reasonably consistent with the law.

f. The current interpretation and opinions on the rules and regulations are all included in the Commissioner's Opinions, number 78-1 through 31 (we should all have copies of these).

g. In looking at an interpretation on the rules and regulations, the courts of law do tend to rule in favor of the interpretation that preserves the rule, in preference of an

interpretation that destroys the rule.

h. In reading the rules and regulations, look for key words--

1. and--this infers a conjunctive, indicating that there are two conditions.

2. or--this is a disjunction which indicates an alternative.

3. shall/will--this indicates that the instruction given in that particular rule or regulation must be done.

4. may--denotes a choice.

5. day--unless otherwise specified, is interpreted to be a calendar day.

SECTION 3.100 APPLICABILITY, EXTENSION, AMENDMENTS, EFFECTIVE DATE

PAR. 3.101. Applicability. These rules and regulations apply to classified positions only.

PAR. 3.102 Extension. This section specifies that when by either Executive Order or Legislation, a non merit agency is made merit, those affected employees are considered to be

on interim appointment. They are not subject to the provisions of the rules and regulations until the Personnel Board establishes a regulation that provides for them to come fully under the Merit System. An interesting note here was that, when these agencies are blanketed under, we do not require that the employees meet our current specification for the job. If an employee has been working for 4 months, that 4 months is considered to be 4 months toward his 6 months working test. Additionally, in the event of a reduction-in-force, the time considered for these employees is only the time under the classified service.

PAR. 3.103. Petitions to the Board. This provides that any citizen or any classified employee may petition the Board if they believe that the rules are working an unnecessary hardship on him/her. Their petition to the Board will be generally considered on the written record only, therefore, an individual who is petitioning must be sure that what they have in writing expresses fully

what they would like to be considered.

It appears that most people assume that the Pendleton Act began most Merit Systems in the various States. However, the beginning of most Merit Systems was a direct result of the Social Security Act of 1934. It provided basically that agencies administering their programs should operate under a merit type system.

SECTION 3.200 CONFORMITY WITH FEDERAL STANDARDS

The Rules and Regulations of the State Merit System must conform to the minimum standards for a Merit System set-up by federal departments from which we receive federal funds. This is most applicable to the grant-in-aid agencies.

SECTION 3.400 PENALTIES

Of much interest to me, in this provision is the fact that Carson referred to this section as basically a paper tiger. This section of Rule 3 specifies that anyone who knowingly and willfully violates the provisions of these

rules and regulations shall be guilty of a misdemeanor and conviction shall be punished as for a misdemeanor and for a period of five years thereafter be ineligible for appointment to or employment in a position in the State service. Carson explained that the Georgia Supreme Court has held that administrative agencies cannot make misdemeanors and the legislature cannot delegate the authority to these agencies to make misdemeanors. This is an exercise of the legislature only. This does not, however, negate the fact that an employee can be terminated and later prosecuted. There are some specifics in the Georgia Code that do provide for punishment, specifically Georgia Code 26-2311 and Georgia Law 1977, Act 246. Both specify and both apply to employees in State Government who are merit as well as non merit. One very interesting site in the 1977 Act 246 relates to the altering of documents. The penalty for that is imprisonment for not less than 2 and no more than 10 years.

SECTION 3.700 EMPLOYEE COMPLAINTS

This section made the foundation for Regulation F-Grievance Procedure. This establishes that every department shall comply with this provision, and set forth a mechamism for hearing and resolution of employee's grievances.

PAR 3.901 Prohibits unlawful discrimination.

APPENDIX H

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES () THIS IS AN IMPORTANT RECORD SAFEGUARD IT () ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

DD FORM 1 JUL 79 214 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE. **CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY**

1. NAME (Last, first, middle)	2. DEPARTMENT, COMPONENT AND BRANCH	3. SOCIAL SECURITY NO.
JONES, ROLAND ALEXANDER	ARMY-RA-INF	232 | 52 | 3133

4a. GRADE, RATE OR RANK	4b. PAY GRADE	5. DATE OF BIRTH	6. PLACE OF ENTRY INTO ACTIVE DUTY
LTC	0-5	370329	Bluefield, WV

7. LAST DUTY ASSIGNMENT AND MAJOR COMMAND	8. STATION WHERE SEPARATED
HQ USA FORSCOM FC	Ft McPherson, GA 30330

9. COMMAND TO WHICH TRANSFERRED	10. SGLI COVERAGE
NA	AMOUNT $ 20,000 ☐ NONE

11. PRIMARY SPECIALTY NUMBER, TITLE AND YEARS AND MONTHS IN SPECIALTY (Additional specialty numbers and titles involving periods of one or more years)

11A5G, Inf Off, Gen, 21 years & 4 months

53C, Mgt Info Systems Off, 5 years & 5 months

12. RECORD OF SERVICE	YEAR(S)	MON(S)	DAY(S)
a. Date Entered AD This Period	59	06	01
b. Separation Date This Period	80	09	30
c. Net Active Service This Period	21	04	00
d. Total Prior Active Service	00	00	00
e. Total Prior Inactive Service	00	00	00
f. Foreign Service	04	11	20
g. Sea Service	00	00	00
h. Effective Date of Pay Grade	74	09	04
i. Reserve Obltg. Term. Date	00	00	00

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service)

NDSM, Sr Prcht Badge, CIB, AFEM, AM, ARCOM, VSH w/3 BS, VCM w/60 DEV, VCG w/Palm, BSM, 3 O/S Bars, MSM, JSCM, ROK PUC

14. MILITARY EDUCATION (Course Title, number weeks, and month and year completed)

BS Tech Sci WV State Col (1959), IOBC, (1959), Abn, (1959), CINSGCY/SP War Stf Off Crs, (1963), SF Off Crs, (1963), Air Trans Plan Crs, (1963), Jumpmaster Crs, (1964), IOCC, (1966), USACGSC, (1977), Business Adm, George Washington Univ,,(1968), MA, Mgt, Central MI Univ (See Item 18)

15. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM	16. HIGH SCHOOL GRADUATE OR EQUIVALENT	17. DAYS ACCRUED LEAVE PAID
☐ YES ☒ NO	☒ YES ☐ NO	42½

18. REMARKS

Item 14 (cont): (1979), Computer Orien for Exec, (1978), Computer System Security, (1979). Nothing follows.

19. MAILING ADDRESS AFTER SEPARATION	20. MEMBER REQUESTS COPY 6
1390 Heatherland Dr, SW Atlanta, GA 30331	SENT TO GA ☒ YES ☐ NO

21. SIGNATURE OF MEMBER BEING SEPARATED	22. TYPED NAME, GRADE, TITLE AND SIGNATURE OF AUTHORIZED OFFICER
[signature]	KENNETH E. SMITH, CW2, USA, ~~ASST ADJ~~

DA FORM 0132-UF-000-2190 MEMBER - 1

APPENDIX I

STATE MERIT SYSTEM OFFICIAL NOTICE OF EXAMINATION RESULTS.

OUR RECORDS SHOW THAT YOU HAVE APPLIED AND BEEN EXAMINED FOR THE FOLLOWING JOB CLASSES. THE RESULTS OF THESE EXAMINATIONS ARE:

JOB CLASS TITLE	GRADE	V.P. POINTS	FINAL SCORE	EXAM TYPE
TRAIN PROGRAM ADMINISTRATOR	84	10	94	(3)

EXAMINATION TYPES ARE:

(1) WRITTEN MULTIPLE CHOICE TEST.
(2) PERFORMANCE TEST OF SPECIFIC SKILLS.
(3) EVALUATION OF YOUR TRAINING AND EXPERIENCE ON YOUR APPLICATION OR QUESTIONAIRE.
(4) REGRADED FROM PREVIOUS TEST SCORES.
NOTE: EXAM SCORES ARE VALID FOR TWELVE MONTHS.

01/28/81 232 52 3133

JONES, ROLAND A
1390 HEATHERLAND DR
ATLANTA, GA 30331

APPENDIX J

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

4-0300743295002 10/22/81 ICS IPMMTZZ CSP ATLB
1 4048944400 MGM TDMT ATLANTA GA 10-22 0146P
EST

ROLAND JONES
1390 HEATHERLAND DR
ATLANTA GA 30331

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

4048944400 MGM TDMT ATLANTA GA 10-22 0146P
EST

ZIP
TRUMAN MOORE
47 TRINITY AVE STATE OFFICE BLDG
ROOM 414-S
ATLANTA GA 30334

DEAR MR MOORE

PLEASE BE ADVISED THAT THIS IS MY INITAIL NOTICE OF GRIEVANCE. DETAILS WILL BE PROVIDED WITHIN THE LEGAL TIME FRAME ALLOWED.

I WILL BE PRESENT FOR DUTY ON MONDAY OCTOBER 26 1981 AS USUAL.

ROLAND A JONES

APPENDIX J1

November 13, 1981

Mr. Roland Jones
1390 Heatherland Drive, S. W.
Atlanta, Georgia 30331

Dear Mr. Jones:

We received your notification of October 22, 1981 indicating your grievance. We requested guidance from the DHR Office of Personnel Administration as to how we should proceed.

The Office of Personnel Administration referred us to Section II, A.6.a of the DHR Employee Complaint Procedure, which reads:

Eligible Employees

The Employee Complaint Procedure is intended for, and may be used by any full-time DHR Employee or part-time DHR employee who works 20 hours or more per week. This includes both Merit System classified and unclassified employees. Employees who have been notified of employment termination are not eligible to file a grievance.

In light of this information, it appears that your grievance is no longer possible. We

trust this communication will clarify for you that we cannot process your grievance.

Sincerely,

Douglas G. Greenwell
Deputy Director
Division of Family and
Children Services

(Note: State Merit System Regulation F makes no mention of notification of termination terminates grievance rights. It does, however, state in (See App. F#) Regulation F.103 (F#15) "employees shall be free to use the grievance without fear of reprisal", Regulation F.402.2 (F#32) 15 days after occurrence or when employee became aware of the problem, Rule 14.100 (F#28) fifteen calendar days from receipt of written notice or the effective date of the action or decision, which ever is later, Rule 14 PAR 14. 101 (F#29) 15 days....., Rule 14.212 (F#34) 30 calender days after occurrence, and Appendix J2, F.400, 1[b] provides 60 days to complete the process).

APPENDIX J2

(NOTE: FROM MERIT SYSTEM)

Some Special Points Concerning Grievances

Access to the Grievance Procedure is a Right of employees, not just a privilege. Any attempt on the part of a supervisor to persuade an employee not to file a grievance, either directly or indirectly, is prohibited and is a grievable and appealable offense. (Under Rule 14.212 - Other purported violations of the Rules and Regulations)

When a subordinate announces the intention of filing a grievance, your role is to make a reasonable effort to gain a clear understanding of the complaint and to attempt to achieve resoultion to the problem. If you will not or cannot grant the relief requested by the grievant, you can offer an alternative relief or a partial relief (which the grievant is free to accept or refuse) [PETITIONER CANNOT BE FIRED FOR NOT ACCEPTING] or you can submit an answer in writing stating your reasons for not granting the relief.

Even if the employee's grievance is unreasonable from your perspective, it is best to allow the grievance to be filed without interference. The hearing officer can rule on the reasonableness of the request. Harassment or intimidation should be avoided altogether, along with any retaliatory actions following the filing of the grievance. Refusal to allow employee a reasonable time to process a grievance is appealable.

If you feel that the matter being grieved is not grievable under Regulation F, it is best to seek the opinion of a higher authority before refusing to accept a grievance. If necessary, call the Employee/Management Relations Unit of the Merit System for advice. Refusal to hear a legitimate grievance is an appealable offense.

If the appointing authority and the grievant do not concur concerning the admissability of a grievance, an appeal can be avoided by seeking an opinion in writing from the Merit System Commissioner. Either party

or the Employee/Management Relations Unit can request such a Commissioner's Opinion.

Some points to remember about the grievable and non-grievable matters are as follows:

1. Any of the items listed as non-grievable become grievable if discrimination is charged or if unjust coercion and reprisal is charged. For example: an employee who failed to get a promotion shortly after filing a grievance could grieve not getting the promotion.

2. Although the rating and content of an ROP are not grievable, the manner or circumstances of preparation are grievable. Example: Supervisor of only two months rating an employee's performance for the whole year. Example: Supervisory worked in another building and never observed employee's performance. These items are grievable under unfair treatment.

3. If a salary increase or promotion is denied, based on a poor ROP, the ROP becomes

grievable.

4. Denial of a salary increase is always grievable.

5. Any disciplinary action, even if reasonable and justified, is grievable unless it is an adverse action. (Then it is appealable.

PAR. F.104 Non-eligible Employees

*Up to four categories of employees may be exclused from the grievance procedure at the discretion of the appointing authority.

*Note, however, that the permissible exclusions are class exclusions --not personal exclusions. You cannot permit some temporary employees to file grievances, for example, and deny the right to others who are also on temporary appointment.

*Any classified employee that does not fit into one of the four categories cannot be excluded from the grievance procedure [cf.: Par. F.101].

*Any category of employees that the appointing authority decides to exclude from the grievance process should be listed in the

procedure that is filed with the Commissioner as provided in Par. F.401.

PAR. F.105. Improper Use of Official Authority

*The wording of this paragraph is very broad and the message is plain: Don't try to stop grievances by using or threatning to use any authority or influence, either directly or through others. A promise of reward [promotion, choice assignment, better shift, etc.], for example, is just as much a violation as a threat of sanctions.

*Employees may appeal violations of this paragraph under Par. 14.212.

PAR. F.106. Dissemination of Policies and Procedures

*Reasonable steps to disseminate grievance information to employees include such things as posting on bulletin boards, publication in departmental newsletters and handbooks, description in orientation courses, etc. It is not necessary nor required that each employee be given a personal copy of the regulation or the departmental procedure.

SCT. F.200 DEFINITIONS

*There are seven definitions; most are self-explanatory.

*There are four essential elements in the definition of a grievance [Par. F.202]. These are:

1. eligibility - the employee must be eligible to file a grievance [see Par. F.104 and Par. F.301].

2. personal employment interest - it must be his [or her] employment that is affected. If only a co-worker is affected, that's tough! If only his home life is affected, that's also tough. To meet the definition of a grievance the condition must affect the individual's personal employment.

*F.301.G. - There is an important qualifier here; namely, if the employee can show that the selection of an individual for promotion, etc. is in violation of the agency's own written policies or the Merit System Rules on filling vacancies, he may file a grievance on a selection that is adverse to his employment

interests. Agencies should therefore review any written policies on selection that are now in effect and revise or abolish as necessary to prevent pointless grievances.

*F.301.I. - Note that the exclusion of adverse actions is keyed to Par. 15.101 which defines adverse actions in relation to permanent employees. If, then, employees who are not on permanent status are suspended without pay, etc., the grievances may be legitimate.

SCT. F.400. GENERAL PROVISIONS

*This section requires each department to establish a grievance procedure and submit it to the Commissioner or Personnel for approval as to conformity with the Regulation. Some features are mandatory, others are optional.

*The procedure must include the following provisions:

1. definite steps in processing grievances - the number of steps is not specifically prescribed but it cannot be less than two; i.e., the hearing forum [either a Panel or a Hearing Officer], and the final decision by

the appointing authority.

[a] Usually, the first step is the official with whom the grievance is first filed [this may or may not be the immediate supervisor]; then one or more steps at which the grievance is reviewed by higher level officials, if requested by the grievant; then the Hearing Panel or Hearing Officer; and, finally, a decision by the appointing authority.

[b] It may be somewhat obvious to suggest that there should be enough steps in the procedure but not too many. More specifically, there should be enough steps to suit your organization and no more. Keep in mind in establishing the steps that the whole process must be finished in 60 days from the initial filing unless a longer period is approved by the Commissioner of Personnel [F.501].

2. the method or methods of hearing panel selection - As indicated previously, there are several methods of hearing panel selection, and Hearing Officers may be used as an alternative or a supplement to the Panel [see notes

to F.204]. Whatever method you select must be described in the procedure.

3. organization and duties of the panel - Spell out how they will get started and exactly what they are to do. Panel members and Hearing Officers should understand clearly that they are not empowered to hear and cure the sins of the world. Rather, they are empaneled to hear a specific grievance and make reasonable recommendations to the appointing authority.

Attachment

Grievable Cause as Defined in Par. F.103

1. unfair treatment
2. unsafe working conditions.
3. unhealthful working conditions.
4. erroneous interpretation of Agency policies.
5. erroneous application of Agency policies.
6. erroneous interpreation of the Rules and Regulations.
7. erroneous application of the Rules and Regulations.
8. capricious interpretation of Agency policies.

9. capricious application of Agency policies.

10. capricious interpretation of the Rules and Regulations.

11. capricious application of the Rules and Regulations.

12. unlawful discrimination because of race.

13. unlawful discrimination because of color.

14. unlawful discrimination because of sex.

15. unlawful discrimination because of national origin.

16. unlawful discrimination because of handicap.

17. unlawful discrimination because of age.

18. unlawful discrimination because of religious opinions.

19. unlawful discrimination because of religious affiliations.

20. unlawful discrimination because of political opinions.

21. unlawful discrimination because of political affiliations.

APPENDIX K

SUMMARY OF BASIC RIGHTS, EXPRESSED AND IMPLIED BY LAW THAT PARTITIONER FEELS VIOLATED AND EXTRACTED FROM PETITIONER'S OPENING BRIEF TO THE 11TH CIRCUIT. ALL REFERENCES TO EXHIBITS ARE REFERENCES TO EXHIBITS CONTAINED IN THE OPENING BRIEF: (BIRTH CERTIFICATE AT APPENDIX L.)

* the right not to be discriminated against in any employment practice on the basis of race, color, sex, age, because of desperate treatment and desperate impact. See Griggs v. Duke Power Co., 401 U.S. 424 (1971) and McDonnell Douglas v. Green, 411 U.S. 792 (1973);

* the right that the guarantees of equal protection cannot mean one thing when applied to one individual and something else when applied to another. It is also noted in Bakke that the 14th Amendment is extended to "persons". See University of CA Regents v. Bakke, 438 U.S. 256 (1978);

* the right prima facia rules. See McDon-

nell Douglas.

* the right not to be relegated to a watered-down version of constitutional rights. See Tygrett v. Washington, D.C., Cir. No. 1392-72, (1974);

* the right to fair treatment, fair application of rules and regulations, and fair play by a governmental entity;

* the right to be free from subjectively erroneous or capricious interpretation or application of the rules and regulations; See Rowe v. General Motors Corp., 457 F.2d 348, 359 (5th Cir. 1972) for subjective determinations.

* the right to complete the working test period of six months (See Exs "L" and "V").

* the right not to be abused by supervisors during a working test.

* the right to be free of clearly unreasonable, arbitrary, or capricious action. See Estrban v. Central Mississippi State College, 415 F. 2d 1077 (1979);

* the right that I be provided, under the Vitarelli doctrine, the greatest procedural protection under "any" possible regulatory standards. See Vitarelli v. Seaton, 359 U.S. 535 (1959):

* the right that regulation's validity prescribed by a government administrator be binding upon him as well as the citizen; as this principle holds even when the administrative action under review is discretionary in nature. See Accardi v. Shaughnessy, 347 U.S. 260 (1954);

* the right that an employment decision (including a decision not to employ) which adversely affects the employee not be discriminatory, arbitrary, or capricious;

* the right not to have a dismissal rule retroactively applied (See defendants/appellees Brief);

* the right that administrative convenience cannot validate arbitrary rules. See Cleveland Board of Education v. Lafleur, (414 U.S. 632, 1974)

APPENDIX L

RECORD OF BIRTH

STATE OF WEST VIRGINIA
COUNTY OF MERCER, TO-WIT:

This certifies that the following Record of Birth is registered and preserved in the office of the Clerk of the County Commission of Mercer County, Princeton, West Virginia:

Name Roland Alexander Jones File No. 37-9-102

Date of Birth March 29, 1937 Sex Male

Place of Birth Bluefield, Mercer County, West Virginia

Father: Name St.Clair Jones Color or Race Colored
Age at Time This Birth 26 Birthplace West Virginia

Mother: Name Nettie Smith Color or Race Colored
Age at Time This Birth 22 Birthplace West Virginia

Birth Register No. 9 Page 102 Date Filed April 8, 1937

Given under my hand and seal of said Commission, at Princeton, this 30 day of May 1984

Rudolph O Lemming, Clerk
County Commission of Mercer County, West Virginia

Rue Faye Williams, Deputy

(ANY ALTERATIONS OR ERASURES VOIDS THIS CERTIFICATION)